

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD¹
REGION 32**

**KRAFT PIZZA COMPANY, a wholly
owned subsidiary of KRAFT FOODS
GLOBAL, INC.**

Employer

and

Case 32-RC-5283

**INTERNATIONAL BROTHERHOOD
OF TEAMSTERS LOCAL 78, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

The Employer is engaged in the distribution of pizza products from a number of facilities throughout the United States, including a number of facilities in the State of California.

Petitioner filed a petition with the Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of the Employer's sales representatives, route sales specialists and sales trainees working out of the Employer's Oakland, California facility.² A hearing officer of the Board held a hearing and both parties participated in the hearing.³

As evidenced at the hearing and in the parties' post-hearing briefs, the parties disagree on the scope of the appropriate bargaining unit in this case. Petitioner seeks a unit limited to sales representatives, route sales specialists and sales trainees working out of the Employer's Oakland, California facility. The Employer contends that the appropriate unit in this case is one that

¹ Herein called the Board.

² Petitioner originally sought to represent employees it described as "driver/salesmen." The parties are in agreement that the "driver/salesmen" sought by Petitioner are classified by the Employer as sales representatives, route sales specialists and/or sales trainees and these classifications are used hereafter. The parties further stipulated that the composition of any appropriate unit would consist of these three classifications.

³ Both the Employer and Petitioner timely filed post-hearing briefs in this matter, which I have duly considered in reaching my decision.

includes all of its sales representatives, route sales specialists and sales trainees employed in its San Francisco Bay Market Area, a broad geographical area that encompasses employees working at its facilities in Oakland, Sacramento, Rohnert Park, Watsonville, Fresno and Santa Maria, California and Sparks, Nevada. Alternatively, the Employer contends that a less appropriate, but still appropriate, unit in this case would include all of its sales representatives, route sales specialists and sales trainees working out of its Oakland, Rohnert Park, Watsonville and Santa Maria, California facilities.

I have considered the evidence and the arguments presented by the parties on this unit scope issue. As discussed below, I have concluded that unit sought by Petitioner is not appropriate and that the minimally appropriate unit in this case consists of the sales representatives, route sales specialists and sales trainees employed by the Employer in its Oakland, Rohnert Park, Watsonville and Santa Maria, California facilities.⁴ Accordingly, I have directed an election in that unit.

To provide a context for my discussion of this issue, I will first provide an overview of the Employer's operations. Then I will present in detail the facts and reasoning that support my conclusions on the unit scope issue.

I. OVERVIEW OF OPERATIONS

The Employer distributes pizza throughout the United States under a regional administrative structure. The Employer's Northwest Pizza Region covers the west coast of the United States, including Alaska and Hawaii. The Northwest Pizza Region is administratively divided into districts that are based in Portland, Oregon; Seattle North and Seattle South and

⁴ In addition to its own direct employees, the Employer also uses non-employee distributors to distribute product to retail outlets; these non-employee distributors are not involved in this case.

Spokane, Washington; Salt Lake City, Utah; Boise, Idaho; and San Francisco Bay North, San Francisco Bay South, Sacramento and Fresno, California. Each of these districts is supervised by a district manager and staffed by varying numbers of sales representatives, route sales specialists and sales trainees.

Regional Manager Nancy Mercer supervises the Northwest Pizza Region. Mercer works out of the Employer's administrative facility in Pleasanton, California. Below Mercer are two zone managers, who also work out of the Pleasanton facility. One zone manager covers the broad northwest geographical area of the United States and the second one covers California and Hawaii. With the exception of the four districts that comprise the San Francisco Market Area, district managers in the Northwest Pizza Region report to their respective zone managers. In contrast, the four district managers of the San Francisco Market Area report directly to Regional Manager Mercer.⁵

II. THE UNIT SCOPE ISSUE

Facts

As noted above, the Employer's San Francisco Market Area is comprised of four districts: Sacramento, North Bay, South Bay and Fresno. A district manager and a team of sales representatives, route sales specialists and sales trainees staff each of these districts. The district managers and their teams are stationed at facilities where there is a frozen food storage area. The Employer itself owns only one such cold storage facility and it rents storage and office space at the other locations where it conducts business. District managers and their employees report to their respective facilities each morning, service the customers on their route list for the day, and

⁵ The parties stipulated, and I find, that Regional Manager Mercer, the two zone managers, and the district managers are all supervisors within the meaning of Section 2(11) of the Act.

return to their facilities. District managers may be in the office all day but they normally spend a great deal of time on a route with one of their employees.

The Sacramento District has facilities in Sacramento, California and Sparks, Nevada. The district's main facility is located in Sacramento, where the district manager and ten employees are stationed. Two employees are stationed at facility in Sparks, Nevada. The Fresno District has one district manager and approximately 10 sales representatives, route sales specialists and/or sales trainees. The Fresno district has cold storage facilities in Modesto, Fresno and Tulare, California, with Fresno being the main location. The district manager and four employees are stationed at the Fresno location. Four employees are stationed in Modesto and two employees are stationed in Tulare.

The North Bay District has facilities in Oakland and Rohnert Park, California. That district's main facility is located in Oakland, California, where the district manager and five employees are stationed. Three employees are assigned to the Rohnert Park facility. The South Bay District also has a facility in Oakland, California, as well as satellite facilities in Watsonville and Santa Maria, California. The South Bay district manager and six employees are stationed at the main Oakland facility. Two employees are assigned to the Watsonville facility and one employee is assigned to the Santa Maria facility. The North Bay District's Oakland "facility" and the South Bay District's Oakland "facility" are both located at the same cold storage facility, where the Employer rents three rooms. One of these rooms is used by the drivers of both districts to do their work and they use another room as a common break room. The third room at the Oakland cold storage facility is shared by the two district managers as a common office.

The duties of the sales representatives include selling products to retail customers in their area; loading their trucks with product and delivering that product to their customers; filling the

shelves and building displays at the customer sites; making incremental sales; and filling out appropriate paper work. Route sales specialists are employees who have been trained to be sales representatives and who are awaiting assignment to a permanent position. During this waiting period, route sales specialists are assigned to fill in for sales representatives who are unable to work for various reasons, such as vacation, illness, or on-the-job injury. In this regard, route sales specialists may be assigned to any district for such fill-in purposes. Sales trainees are newly hired employees who are in an eight-week training program. During their training, sales trainees are trained by sales representatives and route sales specialists. At the end of their eight-week period training period, the sales trainees are reclassified as route sales specialists. The duties of the sales representatives, route sales specialists and sales trainees are the same in all of the Employer's various districts.

The sales representatives and route sales specialists in the San Francisco Market Area share the same hours of work, same job duties, same compensation plan, same benefit plan, same dress code and same company policies (as do apparently all employees holding these positions for the Employer throughout the country). Sales trainees also enjoy these same terms and conditions of employment upon their completion of their eight-week training program.

Regional Manager Mercer has monthly conference calls and quarterly meetings with the four district managers who report directly to her. Any information that needs to be provided to the employees is passed along to the team by the district manager.

All hiring of employees in the San Francisco Market Area is done at the district level. The hiring of an employee is generally preceded by two interviews: one by the district manager for the district which is doing the hiring, and a second interview, which is done by either another district manager or by Regional Manager Mercer. The district manager then discusses the

applicant with Mercer and makes a recommendation to Mercer. The district managers' hiring recommendations are usually followed by Mercer, who must approve all new hires. All personnel files are maintained at the Pleasanton location.

Yearly performance reviews in the San Francisco Market Area are done by the district managers for their respective employees. These performance reviews are reviewed and approved by Regional Manager Mercer. The Employer has a progressive disciplinary system that consists of a verbal warning, performance memorandum, and corrective action. In each case the disciplinary action begins with the district manager. In the San Francisco Market Area, if a district manager wishes to give an oral warning to an employee, the district manager first speaks to Mercer and then writes the warning to the employee. If a performance memorandum is to be issued, the district manager first talks to Mercer and then writes the performance memorandum, which must be approved by Mercer prior to its issuance. With a corrective action, the district manager develops the action and submits it to Mercer for approval; if Mercer agrees with the recommendation, she in turn submits it to the Employer's human relations department for final approval. The district managers, however, determine vacations for their team members and may grant them time off, sick leave, time off for doctor appointments, and allowable late time, all without having to secure prior approval from Mercer.

Mercer prepares yearly budgets based on the "components" of each district's team, i.e., the number of employees on the team, number of trucks used by each team, rents and other costs associated with the facilities used by the team, and supplies for each team. The team budgets, however, are finally established at the Employer's main office located in Illinois. Along the same lines, sales performance is tracked on a team basis.

There are occasions where a district will share resources with another district. As noted previously, a route sales specialist from one district may be used to fill in for vacationing employee in another district. In addition, product may be moved from one district to another when one district has an unexpected need for additional product, a district may loan its spare truck to another district (each district has one truck for each employee and an additional spare truck), and districts may share spare ovens and portable bunkers when needed. When any sharing is done, the items shared are transported by the lending team to the district that needs the items.

Analysis

The Board has consistently adhered to the principle that a single location or facility unit is presumptively appropriate and the party seeking a multiple location unit bears the burden of overcoming the presumption. *Cargill, Incorporated*, 336 NLRB 1114 (2001); *Courier Dispatch Group, Inc.*, 311 NLRB 728 (1993); *General Mills Restaurants, Inc. d/b/a Red Lobster*, 300 NLRB 908 (1990). In this regard, the Board will find that a single facility unit is appropriate unless the party seeking the broader unit shows that the single facility has been effectively merged into a more comprehensive unit or is so functionally integrated with another unit that it has lost its separate identity. *R & D Trucking, Inc.*, 327 NLRB 531 (1999); *J&L Plate, Inc.*, 310 NLRB 429 (1993). In assessing whether the single facility presumption has been rebutted, the Board looks at such factors as: (1) control over daily operations and labor relations, including extent of local autonomy; (2) similarity of skills, functions, and working conditions; (3) degree of employee interchange; (4) the physical and geographical location of the facilities; and (5) bargaining history, if any. *Esco Corporation*, 298 NLRB 837, 839 (1990).

The Employer's administrative operations and its labor relations policies are centrally determined; accordingly, the basic terms and conditions of employment at all four San Francisco Market Area districts are identical. Wages and bonus levels are established at the Employer's Illinois headquarters. Regional Manager Mercer is responsible for the implementation of these policies at the four districts and has direct involvement in the hiring, termination, promotion and disciplining of the employees in each district. Each district is considered a separate profit center.

Each of the four districts has its own local district manager, who appears to have substantial local autonomy with respect assigning work duties, issuing initial discipline; recommending the hire of new employees, evaluating employee performance; initially handling employee grievances, approving and scheduling of vacations, and granting employees time off. However, Mercer exercises oversight responsibility over the district managers with regard to employee performance evaluations, the issuance of written and more severe forms of discipline, and the final adjustment of employee grievances.

With the exception of the main facilities for the North Bay and South Bay districts, the four districts of the San Francisco Market Area are not in close geographical proximity to each other. The main facilities for the North Bay and South Bay districts are located at a common cold storage facility in Oakland. The Sacramento district main facility is located approximately 80 miles from Oakland and its satellite facility in Sparks, Nevada is located some 200 miles from Oakland. The Fresno district's main facility is located approximately 200 miles from Oakland and its Modesto and Tulare satellite facilities are approximately 70 and 225 miles, respectively, from Oakland. The North Bay district has a satellite office in Rohnert Park that is approximately 55 miles from Oakland. The South Bay district has satellite offices in Watsonville and Santa Maria, which are approximately 80 and 300 miles, respectively, from Oakland. The four districts

service customers only within their distinct geographical boundaries and do not service customers who are in another district even though they may be geographically close (i.e., the Sacramento district does not service Rohnert Park, and the Fresno district does not service Santa Maria).

There has been some interchange of employees on both a permanent and temporary basis among the four districts in the San Francisco Market Area, although the primary interchange has been between the North Bay and the South Bay districts. When there is temporary interchange of employees between the North Bay and South Bay districts, it is essentially controlled by the two district managers themselves. If there is temporary interchange of employees between the North Bay or South Bay districts and either the Sacramento district or the Fresno district, Regional Manager Mercer must approve such interchange, since that interchange may entail higher travel expenses since the temporary employee will often have an overnight stay. For the same reasons, Mercer must approve temporary transfers from either the North Bay district or the South Bay district to either the Sacramento district or the Fresno district. By far the largest number of temporary transfers occurs between the North and South Bay districts and between the Sacramento and Fresno districts.

A permanent transfer may occur when there is a job vacancy in one of the districts. When a vacancy in a sales representative position occurs, that vacancy is put up for bid on a nationwide basis. The record discloses only one instance of a job vacancy within the San Francisco Market Area being filled by an out-of-market area transfer. Rather, it appears that most vacancies within the San Francisco Market Area are filled by permanent transfers from one of its four districts, but again it appears that most of these permanent transfers involve transfers

between the North and South Bay districts and transfers between the Sacramento and Fresno districts.

The record shows a few common activities shared between districts. The North Bay and South Bay districts share an employee awards dinner and a holiday party. The Sacramento and Fresno district employees are not invited to those functions but have similar shared events between themselves.

There is no bargaining history at any of the four districts that comprise the San Francisco Market Area.

In *Esso Corporation*, supra at 840, the Board found that the presumptive appropriateness of a single-facility unit had not been rebutted, finding that the lack of regular and substantial interchange or contact between employees at three separate warehouses, with the addition of long distances between the locations, outweighed the factors of centralized operations, centralized labor relations, and the common skills and functions of the employees at all locations. The Board further found that local autonomy supported the presumption of the appropriateness of the single facility where local supervisors maintained control over hiring, time off, scheduling, and minor discipline, even though there was centrally determined operational rules and labor relations policy.

Although a number of factors in this case arguably favor the overall San Francisco Market Area unit sought by the Employer, I find on balance that the evidence presented does not establish that the four San Francisco Market Area districts have so essentially merged into a single unit or that they are so functionally integrated that the single facilities have lost their separate identities such that the single location presumption has been rebutted. In coming to this conclusion, I rely particularly on the fact that each facility has a separate immediate supervisor

who has the authority to assign and direct work, to issue minor discipline, to participate in the evaluation of employee performance, and to schedule vacations and grant other time off. I also note that there is insignificant temporary interchange of employees in the four districts and there is no regular contact between employees in the four districts.

While the foregoing would generally be conclusive on finding a single-facility to be appropriate, there is still the question of whether the employees at the Oakland facility constitute an appropriate bargaining unit. This question arises because the Employer's Oakland-based employees work in two districts, i.e., the North Bay district and the South Bay district, and a unit limited to the Oakland-based employees would exclude the three North Bay district employees stationed in Rohnert Park, as well as the two South Bay district employees stationed in Watsonville and the one South Bay district employee located in Santa Maria. Given the facts in this case, exclusion of these latter employees from a unit of Oakland-based employees would seem arbitrary and inappropriate. In this regard, I note that the North Bay district's employees are all commonly supervised by their district manager and that all of the South Bay districts' employees are likewise supervised by their own district manager. Finding a unit comprised of Oakland-based employees appropriate would thus result in a unit of employees, half of whom are supervised by the North Bay district manager and the other half who are supervised by the South Bay District manager, and would further result in other employees directly supervised by these district managers and performing identical work being excluded. Such a restrictive unit would also disregard the evidence of on-going contact and cooperation between the North Bay and South Bay districts, as shown by the interchange of employees and equipment between these two districts. Finally, I note that the bonuses that are paid to the district employees are based on the productivity of the district as a whole and not on individual performance. Thus, the total

compensation of each district employee is dependent upon the performance of the employees in the district as a whole. This last factor only underscores the community of interest shared by all of the employees in any given district and the inappropriateness of Petitioner's requested unit, which would include some but not all of the North Bay district employees and some but not all of the South Bay district employees.

III. CONCLUSIONS AND FINDINGS

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. Petitioner is a labor organization with the meaning of the Act.
4. Petitioner claims to represent certain employees of the Employer.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time sales representatives, route sales specialists and sales trainees employed by the Employer in its North Bay and South Bay districts at its Oakland, Rohnert Park, Watsonville and Santa Maria, California facilities; excluding office clerical employees, guards and supervisors as defined in the Act.

IV. DIRECTION OF ELECTION⁶

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the International Brotherhood of Teamsters Local 78, AFL-CIO. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the voting unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period, (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and, (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

⁶ The unit found appropriate in this case is broader than that originally sought by Petitioner. During the hearing, Petitioner took the position that it is willing to represent employees in a unit that includes both the North Bay and South Bay districts. I have determined that Petitioner has a sufficient showing of interest to proceed to an election in this broader unit.

B. Employer to Submit List of Eligible Voters

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, 361 fn. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before October 21, 2004. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notice of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST, on October 28, 2004. The request may not be filed by facsimile.

DATED AT Oakland, California this 14th day of October, 2004.

Michael H. Leong
Acting Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
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32-1296

401-7500
401-7550
420-0100
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420-4016
420-4033

POSTING OF NOTICE OF ELECTION

PART 193 – OTHER RULES

1. The authority citation for 29 CFR Part 163 is revised to read as follows:

Authority. Sec. 6 National Labor Relations Act as amended (29 U.S.C. 151, 158) and Section 553 of the Administrative Procedure Act (5 U.S.C. 500.553).

2. Part 103 is amended by adding Subpart B, consisting of Sec. 103.20 to read as follows.

Subpart B – Election Procedure

Sec. 103.20 Posting of Election Notices

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.

(d) Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Sec. 102.69(a).